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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

CITIMORTGAGE, INC.,

Plaintiff,

v.

LIBERTY AT MAYFIELD COMMUNITY  
ASSOCIATION; ALESSI & KOENIG, LLC;  
and DOES 1 through 20, inclusive,

Defendants.

Case No. :

Dept. No.:

**COMPLAINT FOR:**

**1. DECLARATORY RELIEF [28 U.S.C.  
§§ 2201, 2202]**

**COMPLAINT FOR DECLARATORY RELIEF**

COMES NOW Plaintiff, CITIMORTGAGE, INC. ("Plaintiff" or "CitiMortgage"), and  
alleges against the Defendants, and each of them, as follows:

**I. JURISDICTION AND VENUE**

1. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332, which confers  
original jurisdiction on Federal Courts in suits between diverse citizens that involve an amount in  
controversy which exceeds \$75,000.00.

2. The subject matter of this Complaint is real property commonly known as 4220  
Silver Magic Court, Las Vegas, Nevada 89129 (Assessor's Parcel No.: 138-03-312-036) ("Subject  
Property"), and is legally described as:

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1 PARCEL I:

2 Lot 318 in Block 1 of MAYFIELD UNIT 7, as shown by map thereof on file in Book  
3 109, of Plats, Page 80 in the Office of the County Recorder of Clark County, Nevada.

4 PARCEL II:

5 An easement for ingress and egress over and across all those areas shown as private  
6 drives on the final map of Mayfield Unit 7.

7 PARCEL III:

8 A private access easement over and across the South Five (5) feet of Lot 319 for the  
9 benefit of said land.

10 3. The current fair market value of the Subject Property exceeds \$75,000.

11 **II. PARTIES**

12 4. Plaintiff is a Delaware corporation authorized and registered to do business in the  
13 state of Nevada.

14 5. Defendant, ALESSI & KOENIG, LLC ("Alessi & Koenig"), is a Nevada Domestic  
15 Limited-Liability Company with its principal place of business in Nevada.

16 6. Defendant, LIBERTY AT MAYFIELD COMMUNITY ASSOCIATION ("HOA"),  
17 is a Nevada domestic non-profit cooperative corporation with its principal place of business in  
18 Nevada.

19 7. Plaintiff does not know the true names and capacities of Defendants sued herein as  
20 DOES 1 through 20, inclusive, and therefore sues these Defendants by such fictitious names.  
21 Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.  
22 Plaintiff is informed and believes and thereon alleges that each of these fictitiously-named  
23 Defendants is a resident of the State of Nevada and is responsible in some manner for the  
24 occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused  
25 by such Defendants.

26 **III. GENERAL ALLEGATIONS**

27 8. Plaintiff is the beneficial interest holder of the first Deed of Trust ("Deed of Trust")  
28 encumbering the Subject Property.

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1           9.     On or about January 12, 2007, non-party, Michael W. Morris, borrowed \$172,000.00  
2 from Meridias Capital, Inc. As part of the same transaction, Mr. Morris executed a Deed of Trust  
3 encumbering the Subject Property. The Deed of Trust was recorded on January 18, 2007, in the  
4 Official Records of Clark County, Nevada as Instrument No.: 20070118-0004033. A true and  
5 correct copy of the Deed of Trust is attached hereto as **Exhibit "1."**

6           10.    The HOA is claiming an interest in the Subject Property pursuant to a Notice of  
7 Delinquent Assessment (Lien) ("HOA Lien") recorded on February 12, 2013, in the Official Records  
8 of Clark County, Nevada as Instrument No.: 201302120001990. A true and correct copy of the  
9 Notice of Delinquent Assessment (Lien) is attached hereto as **Exhibit "2."**

10          11.    On May 6, 2013, Alessi & Koenig, as trustee for the HOA, recorded a Notice of  
11 Default and Election to Sell Under Homeowners Association Lien ("Notice of Default"), in the  
12 Official Records of Clark County, Nevada as Instrument No.: 201305060003304. A true and correct  
13 copy of the Notice of Default is attached hereto as **Exhibit "3."**

14          12.    On June 24, 2013, an Assignment of Deed of Trust was recorded in the Official  
15 Records of Clark County, Nevada as Instrument No.: 201306240002357, conveying all interest in  
16 the Deed of Trust to CitiMortgage, Inc. A true and correct copy of the Assignment of Deed of  
17 Trust is attached hereto as **Exhibit "4."**

18          13.    Alessi & Koenig, on behalf of the HOA, caused a Notice of Trustee's Sale ("Notice  
19 of Sale") to be recorded against the Subject Property on October 10, 2013, in the Official Records  
20 of Clark County, Nevada as Instrument No.: 201310100000595. The Notice of Sale purportedly set  
21 the Subject Property for sale at public auction on November 6, 2013, at 2:00 p.m. A true and correct  
22 copy of the Notice of Trustee's Sale is attached hereto as **Exhibit "5."**

23          14.    On October 15, 2013, CitiMortgage sent a letter to Alessi & Koenig requesting a  
24 payoff demand for the nine (9) month "super-priority" portion of the Lien, pursuant to Nevada  
25 Revised Statute ("NRS") 116.3116, and requested that the November 6, 2013, sale be postponed.  
26 A true and correct copy of the letter and facsimile confirmation is attached hereto as **Exhibit "6."**

27          15.    On October 25, 2013, CitiMortgage sent a letter to Alessi & Koenig including check  
28 number 130571313 made out to Alessi & Koenig in the amount of \$585.00 for payment in full of

1 the super-priority portion of the Delinquent Assessments Lien. The amount represented nine (9)  
 2 months worth of regularly monthly assessments charged by the HOA (9 months x \$65.00-the  
 3 monthly rate at the time the Lien was recorded). A true and correct copy of the letter, check, and  
 4 Notice of Partial Release of Lien, is attached hereto as **Exhibit "7."**

5 16. Enclosed with the October 25, 2013, letter to Alessi & Koenig was a draft Notice of  
 6 Partial Release of Lien, releasing the portion of the Lien that portion of the HOA lien that identified  
 7 in NRS 116.3116(2)(b). (Id.)

8 17. On October 30, 2013, CitiMortgage contacted Alessi & Koenig, via e-mail, to  
 9 confirm receipt of the super-priority payment and also to confirm a prior telephone conversation  
 10 wherein Alessi & Koenig stated that they were rejecting the super-priority payment, would be  
 11 returning the check, and would not postpone the foreclosure sale. A true and correct copy of the  
 12 October 30, 2013, electronic correspondence between CitiMortgage and Alessi & Koenig is attached  
 13 hereto as **Exhibit "8."**

#### 14 **IV. FIRST CAUSE OF ACTION**

##### 15 **DECLARATORY RELIEF [27 U.S.C. §§ 2201, 2202] (Against All Defendants)**

16 18. Plaintiff re-alleges the allegations contain in Paragraphs 1 through 17 as if fully set  
 17 forth herein.

18 19. Defendants failed to comply with NRS Chapter 116, in refusing to identify the payoff  
 19 amount to satisfy the super-priority portion of the HOA Lien, and in refusing to allow Plaintiff to  
 20 pay-off the super-priority portion of the HOA Lien and frustrating Plaintiff's attempts to do so.

21 20. Plaintiff seeks a judicial declaration that:

22 (a) Plaintiff's interest in the Subject Property is not affected by a homeowners association  
 23 foreclosure sale conducted pursuant to NRS 116.3116, et seq.; and

24 (b) Any purchaser at the HOA foreclosure sale, conducted pursuant to NRS 116.3116,  
 25 et seq., takes the Subject Property subject to the Plaintiff's prior-recorded first security interest.

26 21. In the alternative, Plaintiff seeks a judicial declaration that:

27 /././

28 /././

1 (a) The super-priority portion of the HOA Lien is limited to an amount equal to nine (9)  
2 months of regular monthly assessments that would have become due immediately preceding the  
3 recording of the HOA Lien plus any charges allowed by NRS 116.310312 (if applicable);

4 (b) The super-priority portion of the HOA Lien does not include any amount(s) for any  
5 fine, penalty, late charge(s), interest, or costs of collecting;

6 (c) Plaintiff's payment of the nine (9) months of regular monthly assessments that would  
7 have come due immediately preceding the notice of delinquent assessment (or for applicable charges  
8 allowed by NRS 116.310312) relieves the HOA Lien of any priority over CitiMortgage's Deed of  
9 Trust;

10 (d) Defendants are required to identify the amount of its alleged super-priority lien to  
11 Plaintiff, and to provide an accounting to illustrate how this amount was calculated; and

12 (e) Defendants are not permitted to conduct the sale scheduled by **Exhibit "5"** attached  
13 to this Complaint, unless and until Defendants provide Plaintiff with the amount of the alleged super-  
14 priority lien, in accordance with Nevada law, an illustration of how this amount was calculated, and  
15 allow Plaintiff a reasonable amount of time to remit payment.

16 22. Plaintiff is informed, believes, and thereon alleges that Defendants will dispute these  
17 contentions and claim that they have an interest superior to Plaintiff's.

18 23. Plaintiff is informed, believes, and thereon alleges that an actual controversy has  
19 arisen, and now exists between Plaintiff and Defendants, and each of them, concerning their  
20 respective rights and duties in the Subject Property.

21 24. Plaintiff desires a judicial determination of its rights and duties, and a declaration as  
22 to its interests in the Subject Property.

23 25. A judicial determination is necessary and appropriate at this time in order for Plaintiff  
24 to confirm its interest in the Subject Property.

25 26. As a direct and proximate result of the actions of Defendants, Plaintiff has been  
26 required to retain counsel to prosecute this matter and is entitled to an award of attorney's fees and  
27 costs incurred.

28 /././

**V. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against defendants, and each of them, as follows:

**AS TO THE FIRST CAUSE OF ACTION  
DECLARATORY RELIEF [27 U.S.C. §§ 2201, 2202]**

1. For an Order declaring:

(a) Plaintiff's interest in the Subject Property is not affected by a homeowners association foreclosure sale conducted pursuant to NRS 116.3116, et seq.; and

(b) Any purchaser at the HOA foreclosure sale, conducted pursuant to NRS 116.3116, et seq., takes the Subject Property subject to the Plaintiff's prior-recorded first security interest.

2. Alternatively, for an order declaring:

(a) The super-priority portion of the HOA Lien is limited to an amount equal to nine (9) months of regular monthly assessments that would have become due immediately preceding the recording of the HOA Lien plus any charges allowed by NRS 116.310312 (if applicable);

(b) The super-priority portion of the HOA Lien does not include amount(s) for any fine, penalty, late charge(s), interest, or costs of collecting;

(c) Plaintiff's payment of the nine (9) months of regular monthly assessments that would have come due immediately preceding the notice of delinquent assessment (or for applicable charges allowed by NRS 116.310312) relieves the HOA Lien of any priority over CitiMortgage's Deed of Trust;

(d) Defendants are required to identify the amount of its alleged super-priority lien to Plaintiff, and to provide an accounting to illustrate how this amount was calculated; and

(e) Defendants are not permitted to conduct the sale scheduled by **Exhibit "5"** attached to this Complaint, unless and until Defendants provide Plaintiff with the amount of the alleged super-priority lien, in accordance with Nevada law, an illustration of how this amount was calculated, and allow Plaintiff a reasonable amount of time to remit payment.

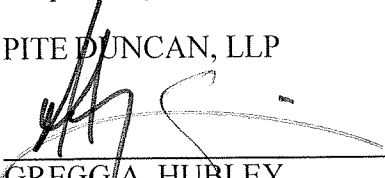
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3. For an award of reasonable attorney's fees incurred herein; and
4. For such other and further relief as the Court deems proper.

DATED this 4<sup>th</sup> day of November, 2013.

Respectfully submitted,

PITE DUNCAN, LLP



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GREGG A. HUBLEY  
ANTHONY R. SASSI  
*Attorneys for Plaintiff CITIMORTGAGE, INC.*